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A Case Analysis on

M.C. VERGHESE V. T.C. POONAN AND ANR.

~ AIR 1970 SC 1876 ~

HARSHITA THOLIYA[1] & RUPALI CHAUHAN[2]

LIST OF ABBREVIATIONS

Art.	*Article*
S.C.	*Supreme Court*
S.C.C.	*Supreme Court Cases*
A.I.R.	*All India Reporter*
ed.	*Edition*
Hon'ble	*Honourable*

[1] LAW STUDENTS AT UNIVERSITY FIVE YEAR LAW COLLEGE, JAIPUR
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CASE ANALYSIS

HEAD NOTES

Section 499 – Section 500 – Indian Penal Code, 1860 – Respondent sent letters to his wife – the letters were read by the Appellant who was his father in law – the letters allegedly contained defamatory declaration about the Appellant – the Appellant instituted defamation case adducing the letters as evidence – defence of 'husband-wife' communication was claimed under Section 122 of the Indian Evidence – District Magistrate discharged the Respondent – on revision, Court of Sessions set aside the order – on appeal, High Court upheld the order of District Magistrate – on further appeal, Supreme Court allowed the appeal while holding the letters insufficient evidence to attribute criminal liability under the provisions and ordered for trial.

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Section 122 – Indian Evidence Act, 1872 – letter of Respondent husband to her wife were adduced as evidence – the admissibility of same was brought in question – the marriage got nullified during the course of proceedings – held, at the time of communication the marriage was in place so the bar under Section 122 would apply however other evidence not barred under the provision can be produced – the Court allowed the appeal and ordered for trail.

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ABSTRACT

In the instant case the respondent-husband had written three letters to his wife which were read by the Appellant. The Appellant then instituted a criminal case against the respondent

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alleging that the letters contained defamatory remarks against the Appellant himself. The Respondent defended the case by asserting that the letters are inadmissible as evidence in the Court of law by the virtue of Section 122 of the Indian Evidence Act, 1872 for it being a communication between husband and wife. Initially, the District Magistrate discharged the respondent-husband. On revision, the Court of Sessions set aside the order of District Magistrate. On appeal to High Court, the order of District Magistrate was restored. Thereafter, the Appellant approached the Supreme Court under Article 134 of the Indian Constitution. The Apex Court observed that in Indian Law husband and wife are treated as separate entities and no exception of English common law would per se apply on the Indian penal provisions. It was thus held by the Court that the letters sent by husband to his wife did not amount to "publication" and thus do not prima facie attract criminal liability under Section 499 of the Indian Penal Code, 1860. Also, it was held that the letters are not admissible as evidence by the virtue of Section 122 of the Indian Evidence Act, 1872 for it being a marital communication while observing that any other proof may be given than those barred under Section 122 for proving the constitution of offence. It thus ordered the inception of trials before the District Magistrate as per the Indian Law.

PRIMARY DETAILS

Forum / Court	*Hon'ble Supreme Court of India*
Jurisdiction	*Criminal Appellate Jurisdiction under Art. 134 of the Indian Constitution*
Equivalent Citations	*AIR 1970 SC 1876, 1969 SCR (2) 692, 1969 (1) SCC 37*
Presiding Members of the Bench	*Hon'ble Justice J.C. Shah* *Hon'ble Justice V. Ramaswami* *Hon'ble Justice A.N. Grover*
Bench Type	*Three Judge Bench*
Counsel for Appellant	*Miss Lily Thomas, Advocate*
Counsel for Respondent Husband	*Dr. W.S. Bharlingay, Advocate & Ganpat Rai, Advocate*

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Provisions Concerned	*Sec. 499, 500 of the Indian Penal Code, 1860 and Sec. 122 of the Indian Evidence Act, 1872.*
Date of Pronouncement of Judgement	*13th November, 1968*

PARTIES TO THE SUIT

a) The Appellant in the instant case is M.C. Verghese, father of Rashi, is the Appellant here who had approached the Apex Court under Art. 134 of the Indian Constitution after the High Court issued certificate allowing appeal under Art. 134A of the Constitution.

b) The Respondent in the instant case is T.C. Ponan, the husband of Rashi, is the Respondent No. 1 in this case.

FACTUAL BACKGROUND OF THE CASE

Rashi, the daughter of the Appellant, received three letters from Bombay written by the Respondent-Husband on 18.07.1964, 25.07.1964, 30.07.1964 wherein he allegedly made some defamatory declarations about the Appellant who upon reading the letters subsequently instituted a case of defamation under Sec. 499, 500 of the Indian Penal Code, 1860.

The Respondent-Husband raised mainly two contentions rebutting the allegations: (1) *firstly*, that the letter which were the sole evidence in the instant case were inadmissible in the Court by the virtue of Sec. 122 of the Indian Constitution which bars any communication between husband and wife as admissible evidence; and *secondly*, that the declarations under the letters cannot be considered "*defamatory*" or cannot be categorised as "*libel*" for the reason that Indian Law does not treat communication between husband and wife as "*publication*" which is one of the pre-requisites for warranting criminal liability under

Sec. 499 of the Indian Penal Code as was also upheld in the case of ***Wennhak v. Morgan***[3].

PROCEDURAL BACKGROUND OF THE CASE

After hearing the arguments advanced by the Respondent, the District Magistrate discharged the Respondent-Husband under section 253(2) of the Criminal Procedure Code, 1973 without recording any evidence. However, while considering the revision petition filed by the Respondent, the Court of Sessions set aside the order. Thereafter, the Respondent filed a criminal appeal in High Court which reiterated and upheld the order of the District Magistrate. Aggrieved with the decision of High Court the Appellant filed a criminal appeal under Article 134 before the Supreme Court of India.

ISSUES RAISED

1. *Whether the letters of Respondent Husband to his wife are admissible as evidence in the Court of Law?*
2. *Whether the declarations made by the respondent husband to his wife be considered "libel" under Article 499 of the Indian Penal Code, 1860?*
3. *Whether the immunity conferred under Section 122 of the Indian Evidence Act, 1872 is waived after the decree of nullity of marriage is granted?*

ARGUMENTS ADVANCED BY THE APPELLANTS

Firstly, the Counsel for the Appellant argued that in the case of ***Lords Rumping v. Director of Prosecution***[4] the communication made by the accused to his wife through a letter confessing the murder which he had given to a member of the crew to post was held admissible in the Court of Law; and *secondly*, that it was foreseeable on the part of the Respondent Husband that the letters may be read by people other then his wife. Thus, it constituted "*publication*" and attracts punishment under Section 499 of the Indian Penal Code, 1860.

[3] Wennhak v. Morgan, (1888) 209 B.D. 635.
[4] Lords Rumping v. Director of Prosecution, (1962) 3 All ER 256.

ARGUMENTS ADVANCED BY RESPONDENTS

The Counsel for Respondent Husband in their application raised mainly two contentions: *Firstly*, that the letters placed on record are inadmissible as evidence in the Court of Law by the virtue of Section 122 of the Indian Evidence Act, 1872 which grants immunity from disclosure of marital communications in Courts; and *secondly*, that uttering a "*libel*" by a husband to his wife is not "*publication*" which is a pre-requisite for attributing criminal liability under Section 499 of the Indian Penal Code, 1860 and he, thus, prayed for an order of discharge.

RATIO DECIDENDI

a. Whether the letters are admissible as evidence in the Court of Law

The Supreme Court held that where the English Common Law treats husband and wife as one entity in the eyes of law, the Indian Law is not that wide in scope in this regard. For supporting its reasoning, the Apex Court reiterated the precedents established in the case of ***Queen Empress v. Butchi***[5] and ***Abdul Khadar v. Taib Begum***[6] wherein it was held that it shall never be presumed under the Indian Law that husband and wife are one entity. Also, it was observed that Section 499 of Indian Penal Code being exhaustive shall not be construed in light of the exceptions provided under the English Common Law.[7]

The Court also observed that although Section 122 of the Indian Evidence Act, 1872 barred marital communications from being admissible as evidence in the Court of Law, other evidences not expressly barred under the said provision may be adduced to prove commission of the alleged offence. Basing the arguments merely on the letters was considered legally invalid. The Court, thus, considered it expedient for the District Magistrate to further enquire into the merits of the case in light of justice, equity and good conscience by holding the criminal trials.

[5] Queen Empress v. Butchi, ILR 17 Mad 401.
[6] Abdul Khadar v. Taib Begum, AIR 1957 Mad 339.
[7] Thiruvengada Mudali v. Thirupurasundari, ILR 49 Mad 728.

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b. *Whether the letters amount to "publication" to attribute criminal liability under Section 499 of I.P.C.*

Section 499 of the Indian Penal Code enshrines that, "*Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.*" Thus, "*publication*" of defamatory imputations is quint-essential for constituting an offence under the aforesaid provision.

The Court in the instant case observed that where the letters were in the possession of the Appellant an enquiry on the complaint based on the preliminary contentions cannot be prohibited which was not conducted by the District Magistrate as the Respondent was discharged without recording of any evidence under Section 253(2) of the Criminal Procedure Code.

c. *Whether the immunity conferred under Section 122 of the Indian Evidence Act, 1872 is waived after the decree of nullity of marriage is granted*

The Apex Court held that the common law precedent established in the case of ***Moss v. Moss***[8] wherein the nullity of marriage was considered to have no effect on the bar on admissibility of marital communications is not applicable in India. In India, the immunity under Section 122 is granted for only those communications which were made while the marriage was subsisting.

Also, the Court held that for determining as to whether it was a marital communication or not the test of subsistence of marriage must be qualified which means that the communication must have been made at the time of subsistence of marriage.

[8] Moss v. Moss, (1963) 2 QBD 829.

OBITUR DICTUM

"*It must be remembered that the Indian Penal Code exhaustively codifies the law relating to offences with which it deals and the rules of common law cannot be restored to for inventing exemptions which are not expressly enacted.*"

ORDERS & DIRECTIONS

The Hon'ble Court allowed the appeal and ordered the District Magistrate to initiate trials to determine whether the Respondent Husband is liable under Section 499 of the Indian Penal Code.

REFERENCES

a. *Wennhak v. Morgan, (1888) 209 B.D. 635.*
b. *Lords Rumping v. Director of Prosecution, (1962) 3 All ER 256.*
c. *Queen Empress v. Butchi, ILR 17 Mad 401.*
d. *Abdul Khadar v. Taib Begum, AIR 1957 Mad 339.*
e. *Thiruvengada Mudali v. Thirupurasundari, ILR 49 Mad 728.*
f. *Moss v. Moss, (1963) 2 QBD 829.*

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